

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 15 October 2004

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In the Matter of

TEDDY J. WHITED
Claimant

Case No. 1995 BLA 01765

v
RHONDA COAL COMPANY
and
DIRECTOR, OFFICE OF WORKERS
COMPENSATION PROGRAMS,
Party-in-Interest
.....

DECISION AND ORDER ON REMAND

This proceeding is before me upon a second remand from the Benefits Review Board. On May 22, 2003, the Benefits Review Board issued a Decision and Order in this matter. The Board rejected an argument by the Employer that it was error to rely upon a reading of a CT test taken on March 11, 1998 by Dr. Navani. The Board rejected Employer's argument that Dr. Navani's conclusion was equivocal since the terms used by Dr. Navani did not explicitly indicate that he was uncertain as to the identify of the disease processes that he observed on the CT scan. In addition, the Board rejected Employer's contention that the fact a medical opinion is based upon a smaller pool of data than other opinions of record does not require the administrative law judge to treat it as undocumented.

The Board found, however, that it was error to rely upon a negative TB test from 1994 in according less weight to the readings of the CT test on March 11, 1998 by Drs. Wheeler and Scott. The Board noted that the findings of Drs. Wheeler and Scott could support a finding that Claimant developed tuberculosis subsequent to 1994 or that the 1994 test merely ruled out the presence of active tuberculosis at that point in time. On remand, the Board directed further review of Dr. Navani's opinion in light of the contrary medical evidence relevant to Section 718.304, and further review of the qualifications of the respective physicians, the explanation of their conclusions, the documentation underlying their medical judgments, and the sophistication and bases of their diagnoses.

Finally, the Board remanded for reconsider whether, if a change in conditions is established pursuant to Section 725.310, modifying the prior denial of benefits would render justice under the Act.

Claimant applied for benefits on October 25, 1994 (DX 1) and his claim was denied by Administrative Law Judge Edith Barnett on December 5, 1996 (DX 49). Judge Barnett found the preponderance of the x-ray evidence and medical opinion evidence established pneumoconiosis under subsections 718.202(a)(1) and (a)(4), however, she found the Claimant had not established the presence of total disability due to pneumoconiosis under Section 718.204 (DX 49). On appeal, the Benefits Review Board affirmed the denial of benefits on the basis of the issue of total disability due to pneumoconiosis. The Board did not address Judge Barnett's findings on the presence of pneumoconiosis (DX 59).

Subsequently, Claimant submitted additional evidence and requested modification. Following a hearing before me, a Decision and Order awarding benefits on modification was issued on March 7, 2000. In particular, I found the newly submitted evidence established complicated pneumoconiosis and invoked the irrebuttable presumption of total disability due to pneumoconiosis under Section 718.304. Employer appealed and the Board remanded for further findings under Sections 718.304 and 725.310. In my first Decision and Order on Remand, I again found Dr. Navani's interpretation of the March 11, 1998 CT scan sufficient to outweigh the contrary CT reports of record and the contrary negative chest x-ray readings of record. I found, therefore, Claimant had established the presence of complicated pneumoconiosis pursuant to 20 C.F.R. 718.304(c), a finding which was not outweighed by the contrary probative evidence of record. As noted above, the Employer appealed and the Board has again remanded with specific directions.

The evidence of record has been set forth in Judge Barnett's determination of December 5, 1996 and my prior determinations of March 7, 2000 and April 23, 2002. I adopt by reference herein those descriptions of the medical evidence.

Upon reconsideration of the CT scan reports regarding the March 11, 1998 CT scan, I again accord less weight to the reports of Drs. Wheeler and Scott, who I am mindful are "B" readers. All the physicians agree that some changes are present on Claimant's x-ray films and CT scan tests. Drs. Wheeler and Scott have consistently concluded that pneumoconiosis is not present and the changes are due to active tuberculosis, tuberculosis or histoplasmosis. Although the negative TB test of 1994 does pre-date their opinions regarding the 1998 CT tests, their negative readings of earlier chest x-ray films are contrary to Judge Barnett's finding that the preponderance of chest x-ray readings are positive and sufficient to establish the presence of pneumoconiosis.

The readings by Drs. Naik and Navani are persuasive for several reasons. First they are consistent in their assessment that pneumoconiosis is present with the preponderance of the chest x-ray readings of record and the medical opinion reports as noted by Judge Barnett. In addition, Dr. Naik's reading was prepared as part of Claimant's ongoing treatment and not in preparation for these proceedings. As noted in prior determinations, their readings are consistent with an earlier hospital report on a CT scan from 1994 which also found changes consistent with pneumoconiosis. On the March, 1999 CT scan, Dr. Naik notes a new mass in the right upper lobe which had conglomerated where a cluster of nodules was previously. He also noted the presence of old granulomatous disease, but he then states the primary disease process is consistent with pneumoconiosis. Dr. Naik also stated progressive massive fibrosis formation is

present and has progressed since 1994. Dr. Navani agreed that complicated pneumoconiosis was present on this CT scan. Thus, these readings do not discount the presence of old granulomatous disease which has been noted by some physicians, but they do specifically find that pneumoconiosis is present which has now progressed to complicated pneumoconiosis.

In the prior determinations, I accorded less weight to Dr. Castle's opinion since he relied primarily upon the findings of Drs. Scott and Wheeler. I reach a similar finding on reconsideration. As noted in prior determinations, Drs. Scott, Wheeler and Navani are all highly qualified as board certified radiologists, Dr. Castle is highly qualified as a pulmonary specialist. Dr. Naik's qualifications are not in the record, but I find his opinion particularly persuasive because it was prepared as part of Claimant's ongoing treatment and not at the request of either Claimant or the Employer. Thus, I find all the physicians are highly qualified, though for different reasons. I find no basis to credit or discredit any physician on the basis of their qualifications.

Accordingly, based on the more persuasive reports of Drs. Naik and Navani and based on my analysis set forth in prior determinations, I find Claimant has established the presence of complicated pneumoconiosis under the provisions of Section 718.304(c). Therefore, I also find Claimant has established total disability due to pneumoconiosis under Section 718.204(b)(1). Since Claimant has now established a change in conditions on the issue of total disability due to pneumoconiosis, he has established a basis for modification of the denial of benefits issued on December 5, 1996.

Upon consideration of this case, I find modifying the prior denial of benefits would render justice under the Act. Employer argues that the findings that are now identified as complicated pneumoconiosis were present earlier and were determined to be unrelated to pneumoconiosis. Thus, Employer argues the Claimant is using the modification proceedings to accomplish what he was unable to accomplish in the first proceedings in this matter. I disagree, however, based on Dr. Naik's finding that the new mass present in 1998 was a conglomeration of earlier clusters of nodules which were present in 1995. Dr. Naik's report establishes that Claimant's condition has changed, the pneumoconiosis present in 1995 has progressed to the point it is now present in conglomerated masses and is not identified as complicated pneumoconiosis. This kind of change is one of the particular circumstances anticipated by the provisions of Section 725.310 since it is well recognized that pneumoconiosis is a progressive and irreversible disease. I find, therefore, that justice is rendered by modifying the denial of benefits. Accordingly, I find Claimant's entitlement to benefits has been established and the order awarding benefits shall be reinstated.

ORDER

IT IS ORDERED that the Employer, Rhonda Coal Company, Inc.:

1. Pay to Teddy J. Whited all benefits to which he is entitled under the Act commencing as of March 1, 1998, augmented by his two dependents but subject to offset for interim benefits he has received from the Black Lung Trust Fund;

2. Reimburse the Trust Fund for the interim payments made to the Claimant; and
3. Provide the Claimant with medical care for his pneumoconiosis effective from March 1, 1998.

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STUART A. LEVIN
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: Pursuant to 20 C.F.R. 725.481, any party dissatisfied with this Decision and Order may appeal it to the Benefits Review Board within 30 (thirty) days from the date of this Decision by filing a Notice of Appeal with the Benefits Review Board at P.O. Box 37601, Washington, D.C. 20018-7601. A copy of this notice must also be served on Donald S. Shire, Associate Solicitor, Room N-2605, 200 Constitution Avenue, N.W., Washington, D.C. 20210.